IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8482 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAIVADAN RAMNIKLAL KAPADIA

Versus

STATE OF GUJARAT

Appearance:

MR MI HAVA for Petitioner

Ms.KATHA GAJJAR, A.G.P. for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/11/2000

ORAL JUDGEMENT

1. List has been revised four times, but none appeared on behalf of the petitioner in any of the calls. Even in the second sitting none appeared on behalf of the petitioner. As such the petition and the impugned notice have been examined. The petition was admitted for final hearing on 2.8.2000. Ad.interim relief was granted on

that date which was to operate till 30.8.2000. Thereafter ad.interim relief was not extended. As such the petition is taken up for final hearing.

2. Brief facts giving is to this petition are that the petitioner claimed to be agriculturist and in occupation of land of Survey No.379 measuring 1 Acre - 24 Guntha. The respondent No.2 Jerambhai Makanbhai is the brother of deceased Vallabhbhai Makanbhai, who expired on 13.3.1988. He executed a will (Annexure : D) on 10.7.1987 bequeathing the land aforesaid in favour of Jayvadan Ramniklal Kapadia. Jairambhai Makanbhai expired on 15.12.1988. The respondents No.2/1 to 2/3 are his legal heirs hence they have been joined in this petition. Entry No.2883 was mutated on 28.11.1991 after issuing due notices to the legal heirs of the deceased. After recording the statement the said entry No.2883 was certified on 14.12.1991 bearing entry No. 2983/A. In this way the petitioner claimed to be the owner of the aforesaid land and in possession thereof since 1988. He averred that he had incurred expenditure for making the land fertile and he is using the land for agricultural purpose since last 12 years and is paying taxes. He, however, received the notice dated 8.6.2000 from the Collector, Surat, purporting to be notice under Rule : 108(6) of the Gujarat Land Revenue Rules. The petitioner, through this notice, was required to show cause as to why revisional powers under Rule : 108 (6) should not be exercised and entry No.2983, certified on 14.12.1991, be not cancelled. Two reasons were given for taking proposed action. The first is that the legatee under the will was non-agriculturist and therefore the provisions under Section 63 of the Bombay Tenancy Act read with Rule : 36(1) were violated. The second ground for taking proposed action was that the land in question was a fragment and transfer was in violation of Section 6 of the Bombay Prevention of Fragmentation and Consolidation of Holding Act. It is against this show cause notice that the petitioner was rushed to this Court and was successful in getting the petition admitted. Normally against show cause notice the writ petitions are not admitted. However, since it has been admitted it has to be seen whether any relief can be granted to the petitioner or not.

3. The grounds on which the show cause notice has been challenged are given in detail in the petition from Para : 5(A) to 5(F). Since the show cause notice has been issued by the Collector calling upon the petitioners to show cause why the revisional power should not be exercised for the two reasons disclosed in the notice it

will be open to the petitioner to approach the Collector, Surat and file his reply taking all these pleas. There is no reasons why the Collector, Surat will not consider the objections to the proposed action in accordance with law. Consequently, when alternative efficacious remedy is available to the petitioner and he has not chosen even to appear before the Collector and furnish his reply to the show cause notice it is not proposed to exercise jurisdiction under Article 226 of the Constitution of India.

4. Thee petition is accordingly dismissed. No order as to costs.

sd/-

Date : November 08, 2000 (D. C. Srivastava, J.)

sas